

<b>RAIN AND HAIL INSURANCE SERVICE, INC.</b>	)	<b>AGBCA No. 98-112-F</b>
<b>(McQuaig, Insured),</b>	)	
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**July 7, 2000**

**Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

This dispute arises out of a 1995 Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC) and Rain and Hail Insurance Service, Inc. (RHIS) of West Des Moines, Iowa. Under the SRA, Appellant sells and administers Multi-Peril Crop Insurance (MPCI) policies in furtherance of the FCIC crop insurance program. The appeal involves a compliance dispute over RHIS' request that it be reimbursed for a \$100,265 apple crop insurance indemnity payment made under a crop insurance contract with the insured. Also at issue was a \$1,981 premium overstatement. The Board has jurisdiction over appeals from compliance determinations pursuant to 7 C.F.R. §§ 24.4(b), 400.169(d).

Essentially the appeal involved whether payments made to McQuaig to cover loss to his 1995 apple crop were properly made. In particular the dispute centered on whether various apples qualified as

sunburned or not. The FCIC working through its Sacramento Compliance Field Office determined that RHIS should not have paid McQuaig's claim.

Soon after the Board docketed the matter, FCIC filed a motion to dismiss, arguing that the Appellant was obligated to file a certified claim. The Board denied the motion on February 19, 1999, on the basis that the regulatory scheme which gave the Board jurisdiction over this dispute had no certification requirement. Rain and Hail Insurance Service, Inc., AGBCA No. 98-112-F, 99-1 BCA ¶ 30,261. Thereafter, FCIC filed a motion for summary judgment in which it contended that there were no disputed material facts and that as a matter of law, the Appellant's appeal should be denied. The Board issued a decision on August 25, 1999, denying FCIC's motion. Rain and Hail Insurance Service, Inc., AGBCA No. 98-112-F, 99-2 BCA ¶ 30,551. In denying FCIC's motion the Board pointed out that if the facts set forth by FCIC were not disputed, then FCIC would have been entitled to have its motion granted. However, the Board found that there were material facts in dispute and if such facts were found in favor of Appellant, then it would serve as a basis to sustain Appellant's appeal. Therefore, summary judgment was denied.

The parties proceeded with preparation of the case. Each requested a hearing, with FCIC requesting subpoenas for various witnesses and documents. On March 27, 2000, the Appellant, on behalf of the parties wrote to the Board to advise it that the parties had arrived at a settlement. Under the settlement, RHIS agreed to dismiss the appeal with prejudice.

### **DECISION**

The Board dismisses the appeal with prejudice pursuant to the settlement of the parties.

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**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

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**EDWARD HOURY**  
Administrative Judge

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**ANNE W. WESTBROOK**  
Administrative Judge

**Issued at Washington, D. C.**  
**July 7, 2000.**